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EXTRAORDINARY

PART II—Section 3—Sub-section (ii)

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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 19th April 1958

S.O. 676.—Whereas the election of Shri Gurmukh Singh Mussafar as a member of the House of the People from the Amritsar constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Abnash Chandar son of Dewan Kirpa Ram, Ghee Mandi, House No. 1507/2, Amritsar;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

BEFORE SHRI RAM PRASAD MOOKERJEE, M.A., LL.B. (RETD. JUDGE, HIGH COURT, CALCUTTA) MEMBER, ELECTION TRIBUNAL, CHANDIGARH.

ELECTION PETITION No. 364 of 1957

Shri Abnash Chandar, s/o Dewan Kirpa Ram, Ghee Mandi, H. No. 1507/2, Amritsar—*Petitioner.*

Versus

1. Shri Gurmukh Singh Musaffar, s/o Shri Sujan Singh, Ranjitpura, Putlighar, Amritsar.
2. Shri Krishan Lal, s/o Shri Ram Avtar, Bazar Bikanerian, Amritsar.
3. Shri Sohan Singh Josh, s/o Lal Singh, Chelanpura, District Amritsar—*Respondents.*

Shri Dalip Chand Gupta, Advocate
Shri Jatinder Vir Gupta, Advocate } for Petitioner.

Shri J. N. Kaushal,
Shri Mani Lal Kalla,
Shri Narinder Singh, } Advocates for Respondent No. 1.

Shri Anand Swaroop, Advocate for Respondent No. 3.

FINAL ORDER

(Passed on 12th February, 1958)

Shri Gurmukh Singh Musaffar was on March 15, 1957, declared elected to the Parliament from Amritsar City constituency during the last General Elections. On April 29, 1957, Shri Abnash Chandar, claiming to be one of the electors in the said constituency, filed a petition making various allegations and prayed that the election of Shri Gurmukh Singh Musaffar be declared illegal and void and that Respondent No. 2 Shri Krishan Lal, who was alleged to have obtained the largest number of valid votes be declared duly elected and that Respondent No. 1 abovementioned and Respondent No. 3 Shri Sohan Singh Josh be disqualified for a period of six years. Written statements were filed on behalf of Respondent Nos. 1 and 3. Various issues were raised and settled. By consent of both the parties the three following of the issues were set down for trial as preliminary issues:—

1. Is the petitioner competent to file this election petition? (Issue No. 28).
2. Was not the election petition presented by the petitioner personally before the Election Commission? If not, is the petition maintainable in law? (Issue No. 29).
3. Is the deposit as security in conformity with the provisions of Section 117 of the Act and if not, is the petition maintainable in law? (Issue No. 30).

2. Ordinarily taking up some only of the issues for decision after recording evidence on those issues only is not usual. Both the parties were, however, agreed that to avoid unnecessary waste of time and money and in the peculiar circumstance of this case, this procedure should be followed. This has been permitted.

3. Witnesses were summoned on behalf of both the parties. After summonses had been issued and the peremptory date had been fixed it transpired on the first date so fixed that the Petitioner had been arrested in connection with the Hindi agitation in the Punjab. The hearing had to be adjourned from time to time for making it possible to have the petitioner produced before the Tribunal for examination as a witness on his own behalf. The Respondent also required the presence of the Petitioner during the examination of some of his witnesses, particularly in connection with Issue No. 29, wherein the person who had presented the Election Petition before the Election Commission was the subject matter of decision. The Petitioner was ultimately produced under police custody and the examination of witnesses was completed. After the examination of the witnesses on both sides the lawyers have been heard.

4. *Preliminary Issue No. 1 (Issue No. 28).*—As stated already the petitioner claims that his name was entered in the electoral roll of the Amritsar East Constituency Division No. 2. This was not admitted by the respondent in his written statement. Under this issue the Petitioner is to satisfy me that he was an elector competent to file this petition under Section 81(1) of the Representation of the People Act.

5. In proof of the claim made by the petitioner, he produced a certified copy of the electoral roll (Exb. P-3) of which the English translation is marked Exb. P-3/1. It appears therefrom that the petitioner is enrolled under serial No. 2920 and his father's name is Kirpa Ram. After this fact had been brought out on behalf of the respondent it could not be and was not contended that the petitioner was not competent to file the present petition. This issue was not accordingly pressed during argument. This issue is found in favour of the Petitioner.

6. *Preliminary Issue No. 2 (Issue No. 29).*—Under sub-section (2) of Section 81 of the Representation of the People Act:—

“An election petition shall be deemed to have been presented to the Election Commission—

- (a) when it is delivered to the Secretary to the Commission or to such other officer as may be appointed by the Election Commission in this behalf—
 - (i) by the person making the petition; or
 - (ii) by a person authorised in writing in this behalf by the person making the petition; or

- (b) when it is sent by registered post and is delivered to the Secretary to the Commission or the officer so appointed.

7. As indicated on the first page of the original election petition (marked as Exb. R-1) it appears that Shri Din Dayal, Under Secretary, Election Commission of India, recorded the following certificate under his signature dated April 29, 1957:—

“Presented to me by Shri Abnash Chandar whose signature has been obtained in the margin and attested as having been signed before me this the 29th day of April, One thousand Nine hundred and fifty-seven.”

8. On the left hand margin of the first page of the said petition, there is a signature “Abnash Chandar” followed by the certificate “ATTESTED D. Dayal 29/4/57”.

9. In the order sheet of this case maintained by the Election Commission it is entered under the date April 29, 1957, signed by the Under Secretary—

“This petition was presented personally by the petitioner Shri Abnash Chandar on the 29th April, 1957. Acknowledge its receipt.”

10. In paragraph 13 of the written statement Respondent No. 1 avers that the election petition had not been properly presented as Shri Abnash Chandar did not appear personally at the time of the presentation of the election petition and that the signatures purporting to be his appended at the time of the presentation of the petition are not his. It is not questioned that the Under Secretary, Election Commission was not an officer appointed by the Election Commission to receive the election petitions. The only question that falls to be decided is whether the petitioner had personally presented the petition or there was a false personation before the Commission.

11. As there was a certificate under the signature of a competent officer of the Election Commission that Shri Abnash Chandar had presented the petition on April 29, 1957 and in the order sheet of the Election Commission, it was also so recorded, the onus lay upon the respondent to prove the allegations made by him. Under Section 114 of the Indian Evidence Act, 1872, read with illustrations (c) and (f) thereunder, there is a presumption that the official act had been regularly performed and that the common course of business had been followed in this particular case. With a view to support the allegation as made by Respondent No. 1 the Under Secretary, Election Commission, Shri Din Dayal was examined by the former in the case. He has proved the endorsements made by him as also the fact that the signatures on the left hand margin of the first page of the Election Petition had been put by him and the person who presented the petition also signed the paper in his presence. The petitioner was produced in Court before the witness and on being asked whether this was the person who had presented the petition, the witness stated, as was expected, that it was not possible for him to remember the features of the different petitioners who had presented election petitions before him so long ago. He also stated that his attestation was only of the signature of the person who presented the petition before him and called himself as Abnash Chandar. An attempt was made during the examination of this witness to elicit the hour of the day when the petition had been presented. Petitions had been received by the witness even beyond office hours as had been directed by the Secretary, Election Commission. The witness could not remember whether this particular petition had been received by him during office hours or after the office hours. There was no system in vogue for identification of petitioners filing election petitions and the attestation clause merely testified to the signature of the person who presented the petition. This witness also proved Exb. P-2, being a letter which had been signed by him after the presentation of the Election Petition and had been addressed to Shri Abnash Chandar, s/o Shri Dewan Kirpa Ram, House No. 1507/2, Ghee Mandi, Amritsar, acknowledging receipt of this election petition. In course of the cross-examination this witness further stated that he did not remember whether the petitioner had signed his name on each of the pages of petition in his presence. He could not also remember whether the petitioner had been accompanied by his Counsel Shri B. P. Joshi, when the petition was presented. It was also not possible for

the witness to recollect whether the petition had been presented at 4-30 P.M. in the office.

12. The respondent examined two other witnesses, namely, Shri Avtar Singh, R.W. 2 and Shri Jai Inder Singh, R.W. 3. The former was a counsel who had gone to the office of the Election Commission to file other election petitions on April 29, 1957, the same day on which the present election petition had been filed. In connection with those other Election Petitions he was accompanied by Shri Jai Inder Singh, R.W-3, who was the Secretary of the District Congress Committee, Amritsar. All that these witnesses could state is that during the period they were, or either of them was, in the office of the Election Commission, neither had seen or met the petitioner Shri Abnash Chandar in the office.

13. The petitioner examined himself and averred that he himself had presented the petition to the Under Secretary, Election Commission. He had himself signed in his presence his name on the petition. He also did not meet either Shri Avtar Singh, R.W-2 or Shri Jai Inder Singh, R.W-3 at the time when he presented the petition. He further stated that he had engaged Shri B. P. Joshi a lawyer, for settling the final draft of the Election Petition. He was with him at the time when he presented the petition to the Commission. According to him the petition was presented between 3 and 4 P.M. on the date mentioned.

14. After the examination of these different witnesses the learned Advocate for the Respondent, at the stage of the arguments, frankly conceded that it was not possible for him to submit that he had discharged the onus which lay upon his client to prove that the petition had not been presented by the petitioner himself on the date alleged. On the materials before me I have no doubt that this Election Petition has been proved to have been delivered to the Under Secretary, Election Commission who was appointed by the Election Commission to receive election petitions and that the petition was presented by Shri Abnash Chandar himself as indicated on the face of the petition itself. This issue is found in favour of the petitioner.

15. *Preliminary Issue No. 3 (Issue No. 30).*—The principal argument advanced on behalf of the respondent on this issue is that the deposit which was made by the petitioner as evidenced by the treasury chalan which is marked as Exb. P-1 does not satisfy the provisions of Section 117 of the Representation of the People Act. Immediately after the election petition had been presented the Chief Election Commissioner while admitting the petition observed *inter alia* in the following terms in his order sheet on May 13, 1957:

“The treasury chalan enclosed with the petition is defective in-as-much as it does not specifically mention that the amount has been deposited in favour of the Secretary to the Election Commission. This may make it difficult for the costs, if any, ordered against the petitioner to be realised out of the deposit. It will be for the Tribunal to decide during trial after hearing the parties whether the defect in deposit is fatal or may be cured, *e.g.*, by fresh deposit or otherwise so as to safeguard respondent's right to costs, if any, awarded in their favour.”

16. This observation was presumably under Section 85 of the Representation of the People Act and though after giving a hearing to the petitioner the Election Commission was entitled to dismiss the petition for non-compliance of the provisions of Section 117 the Chief Election Commissioner appears to have left the question to be decided by the Tribunal and after hearing the parties.

17. Under sub-section (3) of section 90 of the Act—

“The Tribunal shall dismiss an election petition which does not comply with the provisions of Section 81, section 82 or section 117 notwithstanding that it has not been dismissed by the Election Commission under Section 85.”

18. It was after the written statement had been filed and the issues settled that the non-compliance of the provisions contained in Section 117 was raised for decision as one of the preliminary issues at this stage.

19. As the contents of the treasury receipt have to be considered, I give below relevant extract of the treasury receipt filed in this case:—

Chalan of cash paid into the Amritsar Treasury

To be filled in by the Remitter			To be filled in by the Departmental Officer or the Treasury	
By whom tendered.	Name (or Designation) and address of the person on whose behalf money is paid.	Full Particulars of remittance and of authority (if any).	Amount	Head of Account
Abnash Chandar	Abnash Chandar	Security deposit for Election Petition against G. Gurmukh Singh Musaffar from Amritsar City Parliamentary Seat	Rs. 1000	Central (Civil) Section P- Deposits and Advance Part II deposits not bearing interest (c) other deposits accounts civil deposits Revenue Depo- sits for Election Petition.
		Total	Rs. 1000	

20. The Representation of the People Act, 1951, is divided into XI Parts. Part VI thereof deals with disputes regarding election. Chapter V in this Part headed 'Costs and Security for Costs' opens with Section 117 which is in the following terms:—

"117. Deposit of security.—The petitioner shall enclose with the petition a Government Treasury receipt showing that a deposit of one thousand rupees has been made by him either in a Government Treasury or in the Reserve Bank of India in favour of the Secretary to the Election Commission as security for the costs of the petition."

21. The conditions imposed under Section 117 may be analysed and stated as follows:—

- (i) A deposit of Rs. 1,000 must have been made by the petitioner;
- (ii) the deposit has been made in a Government Treasury or in the Reserve Bank of India;
- (iii) the deposit is in favour of the Secretary to the Election Commission;
- (iv) the deposit is as security for the costs of the petition; and
- (v) the Government Treasury receipt is to be enclosed with the election petition.

22. It is contended on behalf of the respondent that the Petitioner has satisfied all the conditions imposed under section 117 of the Act, except that there is no indication on the face of the receipt that—

- (a) the deposit was "in favour of the Secretary to the Election Commission"; and that
- (b) it is not stated specifically on the receipt that the deposit was "security for costs."

It is urged on behalf of the respondent that the provisions contained in Section 117 not having been fully complied with under sub-section 3 of Section 90 of the said Act, the Tribunal is bound to dismiss the election petition.

23. Though at an early stage it had been faintly contended on behalf of the Respondent that the question whether the Treasury Receipt produced is in conformity with the provisions of Section 117 of the Act has to be decided by merely looking into the receipt without permitting any other evidence to be produced, this stand was not continued. No attempt was also made to advance any argument so far as this case is concerned. I may point out that my attention was not drawn to any provision in the Representation of People Act which bars out evidence

on this point. In view of the ultimate result in this case this question is not of much practical importance.

24. The first question that arises is—

“Are the provisions contained in Section 117 merely mandatory or directory in nature?”

Whatever doubt and dispute there might have been in the past it has now been finally settled by the Supreme Court in *Jagan Nath v. Jaswant Singh A.I.R. 1954 S.C. 210* that if non-compliance of a particular provision is made penal such a provision assumes a mandatory character. The use of the word “shall” in section 117 taken along with the penalty provided in section 90(3) of the Act support the view that these provisions are of a mandatory nature. It is, however, contended on behalf of the Petitioner that in interpreting the effect of the mandatory provision, it is open to the Court to examine whether all the minutest details must be satisfied or that it would be sufficient if there is substantial compliance thereof. We proceed to consider the merits before we examine the soundness of the proposition enunciated.

25. If we analyse the different requirements under section 117 it seems clear that the purpose for which this security is demanded is to provide a source out of which the costs, which may fall to be levied if the petitioner fails, may be realised. To make such realisation easy it is provided that the deposit should be made either in a Government Treasury or in the Reserve Bank of India and that the deposit is to be made in favour of the Secretary to the Election Commission. It should also be indicated on the face of the receipt that the deposit is being made as security for the costs of the Election Petition.

26. The defects as pointed out by the respondent in the Treasury receipt in this case are of a two-fold nature. In the first place it is not shown that the deposit was made in favour of the Secretary to the Election Commission. In the third column wherein full particulars of the remittance and of the authority are to be mentioned it is indicated that the deposit is as “security deposit for election petition against G. Gurmukh Singh Musaffar from Amritsar City Parliamentary Seat.” Such description may be deemed to be sufficient to attract the deposit for meeting the costs that may be levied and the second part of the objection raised by the Respondent is not well founded. But what is the consequence of the deposit not having been made in favour of the Secretary to the Election Commission?

27. The Petitioner had cited the Treasury Officer, Amritsar as one of his witnesses. Various questions were put to him to elicit the rules governing deposits in government treasuries and the manner in and the circumstances under which such deposits may be made available for the purpose for which deposits are made and also how and by whom such deposits may be withdrawn. On a careful reading of his deposition it appears that in this particular case there having been no name mentioned as to the authority who would be entitled to withdraw the amount the relevant column in the Treasury Register also has been left blank. Unless and until such column in the treasury register is filled in no payment can be made either to the depositor or to anybody else without the order of that competent authority. The competent authority to whom the treasury receipt is presented for payment is to see whether the treasury receipt is a good one and if he finds any fault therein he is either to ask the person concerned or the Treasury Officer to rectify the mistake or make good the omission. He has also indicated that unless and until there is such rectification the amount in deposit in this case will not be available for payment for any purpose whatsoever although there is no possibility of the amount being refunded to the depositor at his request. In answer to a question put by me at the end of his examination, that the chalan as it now stands without the name of the person or authority in whose favour the deposit is made, can the amount be paid without rectification to a party as may be directed by either the Election Commissioner or by the Election Tribunal, the Treasury Officer gave the categorical reply—“It cannot be”.

28. The effect of the deposition of the Treasury Officer is that the amount which is in deposit of which the Treasury receipt is attached to the Election Petition, cannot be available in its present form for payment to any person in spite of orders which may be made by the Election Tribunal or through the Election Commissioner. The result, therefore, is that the very purpose for which the security deposit is required to be made under section 117 of the Representation of the People Act, is defeated. There is no escape from the conclusion that there has not been even sufficient or substantial compliance of the provisions contained in that Section.

29. On behalf of the Respondent my attention had been drawn to various decisions by different Election Tribunals to the effect that there must be a strict compliance and not merely a substantial compliance of the provisions contained in section 117 of the Act, and that non-satisfaction of any one of the conditions, even verbal ones, would be fatal for the maintainability of the petition. A contrary view had been expressed in some other cases. In one of those of the latter group K. Damodaran *versus* P. Kunhan and others, Election Petition No. 262 of 1957, decided by the Election Tribunal, Kozhikode, on 7th November 1957, published in the Gazette of India on December 5, 1957, No. 571 Extraordinary Part II, Section 3 the Election Tribunal had sent a communication to the Comptroller of Kerala to ascertain if the deposit in that case would ensure to the benefit of the Secretary to the Election Commission and a reply was received that the petitioner might inform the Treasury Officer that the amount deposited was in favour of the Secretary to the Election Commission. Such an application having been obtained by the Tribunal was forwarded to the Treasury Officer. The Treasury Deputy Collector, Trivandrum thereupon informed the Tribunal that necessary additions in the accounts have been effected in accordance with the prayer of the petitioner. The original omission of the name of the Secretary, Election Commission had thus been made good. Thereafter the amount in deposit was available for the purpose for which the security had been given. That Tribunal held thereafter that the deposit made was in substantial compliance with the provisions of Section 117 of the Act and was valid. I do not express any opinion as to whether it is permissible for the Tribunal to enter into a correspondence with the Treasury Officer and to have his records corrected and amplified for the purpose of making the amount available. No such step had been taken in the case now before me and it is not necessary for me to express any opinion whether such a prayer if made could or should have been entertained.

30. The position, however, is that the deposit in the present case is not available for the purpose for which Section 117 of the Representation of the People Act provided a deposit being made. Even if substantial compliance of the provisions of the Act were to be sufficient it must be held that there has not been even an such compliance.

31. If the provisions of Section 117 are not complied with, the only order which the Tribunal can pass is that under Section 90(3) of the Act, the election petition is to be dismissed. It need only be pointed out that under sub-section (3) of Section 90, the word 'may' has been changed into 'shall' and it is no longer discretionary with the Tribunal to dismiss the petition or not. The only result which follows is that the election petition must be held not to be maintainable and is, therefore, liable to dismissal.

32. This petition is accordingly dismissed.

33. As regards the question of costs, it will appear that during the hearing of the three issues which were taken up for consideration at this stage, in respect of two of them the Respondent has failed. Major portion of the evidence which had been brought in by the Respondent was in respect of those two other issues. Considering all the circumstances, I think, that the respective parties should bear the respective costs.

34. The original treasury chalan which had been obtained during the hearing from the Election Commission be sent back to the Commission.

February 12, 1958.

RAMA PRASAD MOOKERJEE,
Election Tribunal, Chandigarh.

[No. 82/364/57.]

By Order,
DIN DAYAL, Under Secy.

